

THE HONORABLE BARBARA J. ROTHSTEIN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

GORDON HEMPTON,

Plaintiff,

v.

POND5 , INC., a Delaware Corporation;
and POND5 USER CKENNEDY342, a
corporation or individual of type unknown,

Defendants.

NO. 3:15-cv-05696-BJR

DECLARATION OF ROGER M.
TOWNSEND IN SUPPORT OF
PLAINTIFF'S REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATION
OF ORDER GRANTING SUMMARY
JUDGMENT (DKT. 49)

Roger M. Townsend states:

I am an attorney licensed to practice before the courts of the State of Washington. I represent Plaintiff Gordon Hempton. I have personal knowledge of the facts stated herein and am competent to testify to these facts.

1. The parties engaged in settlement discussions throughout June 2016 and in an unsuccessful mediation before Lou Peterson on July 5, 2016.

2. In early July, after the mediation failed, Plaintiff resumed discovery and litigation of the broader case. In the weeks following the failed mediation, I conducted discovery conferences and follow-up emails with Pond5's counsel regarding, among other things, the metadata missing from the sound files that Pond5 had produced to Plaintiff, and the identities of the customers who downloaded Mr. Hempton's files.

4. Mr. Virostek, one of the industry's foremost experts in metadata, happens to have been abroad during the time period that he was preparing and finalizing his expert report. Due to the distance and time difference, getting the voluminous sound files to Mr. Virostek took time, as did exchanging emails and feedback with Mr. Virostek about his analysis.

Dated this 2nd day of December, 2016 in Seattle, Washington.

By: s/Roger M. Townsend
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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Jamie Telegin
Jamie Telegin, Legal Assistant